IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23631 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTABEN DHULABHAI KHANT - Petitioner
Versus
THE STATE OF GUJARAT THRO'P.PANNEERVEL,IAS OR HIS & 2 - Respondents

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Appearance :
MR BM MANGUKIYA for Petitioner : 1,
MR HEMANT MAKWANA AGP for Respondent : 1,
NOTICE SERVED for Respondents : 1 - 3.
MR HS MUNSHAW for Respondent : 3,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 11/09/2007

ORAL JUDGMENT

1. Rule. Mr. Makwana, learned AGP waives service of Rule on behalf of respondent No. 1 and Mr. Munshaw, learned

counsel waives service of Rule on behalf of respondent Nos. 2 and 3. With the consent of counsel appearing for the parties, the Rule is fixed forthwith.

2. The petitioner, member of Schedule Tribe Community, married to a Non-Schedule Tribe person and working as Anganvadi worker in respondent Nos. 2 and 3 has approached this Court under Article 226 of the Constitution of India challenging the inaction and/or omission on the part of respondents in not treating her to be a member of Schedule Tribe (hereinafter referred to as “S.T.” for short) community only on the ground that she has indicated her surname as “Khant” and she has not come for altering the surname and surname “Khant” is not included in S.T. Community.

3. The facts in brief deserve to be set out as under.

4. The petitioner belongs to Hindu Bhil community, which is classified to be S.T. Community as per the order. The petitioner has produced the certificate issued by the Competent Authority at Page No.17 dated 2.7.1991. The petitioner is serving as Aanganvadi Worker with respondent Nos. 2 and 3. The petitioner was initially appointed in January, 1988 and thereafter, she is continuing thereon. The petitioner married to Dhulabhai Khant in the year 1975 and therefore, naturally, she is having 'Khant' as surname and her husband's name after her name. The petitioner is belonging to S.T. Community, whereas, her husband belongs to Khant community, which is not treated as S.T. Community by the respondents. However, the respondents are not disputing

the fact that the petitioner was borne in Bhil Community and she was rightly issued certificate dated 2.7.1991 indicating that she belongs to Bhil Community, which is classified to be S.T. Community in the State of Gujarat. The petitioner approached the concerned authority with a request to treat her as such, which was resisted on the ground that her surname is changed and to that effect i.e. “Damor” from “Khant”, the name cannot be changed.

5. Shri Mangukiya, learned counsel appearing for the petitioner has submitted that the respondents have in fact accepted the petitioner's status as S.T. member as it is evident from the annexure at Page No. 17 and the averments made in the affidavit-in-reply. However, the benefits which would accrue thereon are yet not given to the petitioner. Shri Mangukiya, learned counsel for the petitioner has invited this court's attention to the avements made in the affidavit-in-reply at Page No.33, wherein, the deponent has categorically sated that needful would be done while finalizing the Seniority list of the cadre of Anganvadi Workers. Shri Mangukiya, therefore, submits that when the status of the petitioner as “Damor” - S.T member is not challenge, nor her certificate dated 2.7.1991 is challenged, then, the admen on the part of respondent in changing the surname is ill-founded.

6. This Court has heard the learned counsel for the parties at length. Learned AGP as well as learned counsel for the respondent Nos. 2 to 3 could not show as to how the lady belonging to S.T. Community would loose her status on

her marrying to a gentleman not belonging to S.T. In the instant case, the counsel for the petitioner has stated that the status of husband is not that of S.T. However, he has mainly relied upon the submission that the S.T. woman would not loose her status as such on marrying a husband, caste is of no relevance in claiming the benefits as member of S.T. Community.

7. The respondents have accepted the certificate dated 2.7.1991 issued by the Competent Authority indicating unequivocally therein that the petitioner belongs to S.T. Community by birth. The respondents have also admitted the said facts by accepting her objection as it could be seen from the affidavit-in-reply. The inaction in according the benefits on that basis is impugned in this petition. Once the respondents have stated themselves that they do not dispute the petitioner's status to be that of S.T. candidate, it would not be open for the respondents to insist upon the petitioner to change the surname.

8. In the result, the petition is allowed. The respondent Nos. 2 and 3 are hereby directed to treat the petitioner as member of Schedule Tribe on the basis of the certificate dated 2.7.1991 and accord all the benefits flowing therefrom as expeditiously as possible within 15 days from today. Rule is made absolute to the aforesaid extent. There shall be no order as to costs. Direct service permitted.

[S.R.BRAHMBHATT, J.]

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